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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 287

THE BENDIX CORPORATION
(RESEARCH LABORATORIES DIVISION),
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B) is reported at 299 F. 2d 308. The Board's decision and order are reported at 131 NLRB 599 (R. 34a-36a).[1]

[1] References designated "R." are to the Appendix to the Board's brief in the court below.

JURISDICTION

The judgment of the court of appeals was entered on February 20, 1962 (Pet. App. B). Rehearing was denied on April 30, 1962. The petition for a writ of certiorari was filed on July 30, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence on the record considered as a whole supports the finding of the National Labor Relations Board that petitioner discharged employee Harold Hunt to discourage its other employees from adhering to the union, in violation of Section 8(a)(3) and (1) of the National Labor Relations Act.

STATUTE INVOLVED

The relevant statutory provisions are set forth in Appendix A to the petition.

STATEMENT

A. The Board's Findings of Fact

1. *Interference, restraint and coercion*

In March 1960, the four rank-and-file employees of petitioner's reproduction unit,[2] including Harold Hunt, attended a Union[3] meeting and signed cards

[2] A unit in the graphic arts department of petitioner's research laboratory (R. 11a).

[3] Local 9, Amalgamated Lithographers of America.

designating the Union as their collective bargaining representative (R. 12a; 19a-20a). By letter dated Friday, April 1, 1960, the Union requested petitioner to recognize it as the bargaining representative of its "lithographic production employees" (R. 12a; 41a). The following Tuesday, Personnel Director Aleck Capsalis called the four reproduction unit employees and their assistant supervisor, James Scarmeas, to a meeting. Capsalis told the assembled employees that they did not need representation by a "third party" and that he was surprised they wanted such representation. He then asked each employee if he favored representation by the Union. When each in turn answered that he wanted the Union to represent him, Capsalis asked what the "trouble" was. The employees complained that they had too much overtime work and suggested the purchase of an additional machine. Capsalis replied that under the law he could make no promises, but perhaps something could be worked out if the employees reconsidered their need for the Union. (R. 12a-13a; 43a-44a, 61a-63a.)

A few days later, Capsalis spoke separately to two of the employees in his office. Capsalis repeated to one that the employees did not need a "third party" to represent them (R. 13a-14a; 132a), and remarked to the other that, as an "intelligent" man, he "could see the disadvantages of a union" for a person who was not "planning to work as a lithographer" permanently (R. 13a; 63a-64a). On Tuesday, April 12, Capsalis discharged Hunt, allegedly for wilfully damaging a machine.

On Thursday afternoon, April 21, Superintendent Simo told the employees in the reproduction unit that they were spending too much time discussing the Union during their coffee breaks, that further discussions about the Union "must be done on their own time outside the Company premises," and that "drastic measures would be taken" against any employee who thereafter engaged in "these extra activities" at petitioner's premises (R. 12a; 115a-116a, 153a).

2. *The discharge of Harold Hunt*

As previously related, Harold Hunt was one of the four rank-and-file employees in the reproduction unit who signed a Union authorization card and who told Personnel Director Capsalis on April 5, 1960, that he favored representation by the Union. According to Hunt's testimony, credited by both the Trial Examiner and the Board, he was discharged a week later by Capsalis under the following circumstances:

On Tuesday, April 12, Hunt was operating a Xerox Processor, a machine used to produce a "master" of written or printed material from which copies can be made on an offset press. In an operation known as "cascading," a metal tray is removed from the machine, attached to an extension arm of the machine by pivot pins welded to its sides, and then agitated to distribute a developing powder (R. 19a). The cascading operation puts considerable stress on the pivot arrangement, and about noon, while Hunt was cascading a tray, a pivot pin pulled away from the side of the tray (R. 19a-20a; 47a). Hunt at once reported the mishap to Assistant Supervisor Scar-

meas, who examined the tray and then called the manufacturer to send a service man (R. 20a; 47a-48a, 64a-65a). After lunch, Hunt spoke to Supervisor Orvosh about the incident, suggesting to him that another piece of equipment be utilized in place of the broken tray (R. 20a; 49a-50a). Orvosh did not question Hunt about the cause of the break (R. 20a; 82a, 51a). About five minutes before quitting time that day, Personnel Director Capsalis called Hunt to his office and discharged him for "wilful destruction of company property" (R. 20a; 51a-52a, 143a).

Supervisors Scarmeas and Beksa gave a different version. They testified that they saw Hunt strike the tray twice with considerable force, and that this caused it to break. Moreover, according to them, when Hunt was asked why he had used such force, he was insolent (R. 20-21a; 90-91a, 105a). Similarly, Superintendent Simo and Personnel Director Capsalis testified that they discharged Hunt on being advised of his abuse of the tray (R. 25a-26a; 111a, 133a). The Trial Examiner did not believe this testimony, and his resolution of the conflict was accepted by the Board (R. 21a-28a, 34a).

B. The Board's Conclusions and Order

On the foregoing facts, the Board concluded that petitioner discharged Harold Hunt, not for destroying company property as it asserted, but to discourage its employees from continuing their adherence to the Union, thereby violating Section 8(a)(3) and (1) of the Act (R. 27a-28a, 34a). The Board

further concluded that petitioner violated Section 8 (a) (1) of the Act by coercively interrogating employees about their union activity, by promising them benefits if they would abandon such activity, by threatening them with economic reprisals if they did not do so, and by unduly restricting their right to discuss the Union at its premises (R. 15a-17a, 34a).

The Board's order (R. 34a-38a) requires petitioner to cease and desist from the unfair labor practices found, and from otherwise interfering with, restraining, or coercing its employees in the exercise of their rights under the Act. Affirmatively, the order requires petitioner to reinstate Harold Hunt with back pay, and to post appropriate notices.

C. The Decision of the Court of Appeals

The court of appeals enforced the Board's order in full. Finding that the Examiner had given "persuasive reasons" for believing Hunt and not believing petitioner's witnesses, the court declined to upset his credibility determinations. Viewing the evidence in the light of these determinations, the court concluded that there was ample support for the Board's findings. (Pet. App. B.)

ARGUMENT

Petitioner's sole contention is that the Trial Examiner and the Board acted unreasonably in disbelieving the testimony of petitioner's witness to the effect that Hunt wilfully damaged company property and was discharged for that reason, and that the

court below erred in not setting aside this credibility determination (Pet. 5, 14-15). The determination, turning, as it does, only on the specific circumstances of this particular case, plainly does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491.[1] In any event, as the Trial Examiner's Intermediate Report, adopted by the Board, clearly shows (R. 21a-28a), the credibility findings rest on rational grounds and are entitled to stand.

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[1] There is no substance to petitioner's contention that the court below deemed itself powerless to review the credibility findings of the Board and Trial Examiner. We submit that a fair reading of the court's opinion makes plain that the court examined those determinations, along with all the other evidence in the record, in reaching its conclusion that the Board's order was entitled to enforcement. To be sure, the court stated that "the credibility of witnesses and the reasonable inferences to be drawn from the evidence are matters for determination by the Trial Examiner and the Board" (Pet. App. B 3), but this does not indicate that the court was abdicating its reviewing function. It simply shows that the court was heeding the admonition in *National Labor Relations Board* v. *Walton Mfg. Co.*, 369 U.S. 404, that the reviewing court should not reweigh the evidence, nor, absent clear error, reverse the Examiner's credibility determinations.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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